

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

MAREK LUKASIEWICZ,

Plaintiff,

-against-

AMERICAN RED CROSS and AMERICAN
RED CROSS IN GREATER NEW YORK,

Defendant.

-----X

Civil Action No.: 1:09-cv-05130-FB -ALC

**DEFENDANT'S ANSWER TO
PLAINTIFF'S "VERIFIED"
COMPLAINT**

Defendant AMERICAN NATIONAL RED CROSS, s/h/a "AMERICAN RED CROSS and AMERICAN RED CROSS IN GREATER NEW YORK," ("Defendant") by its attorneys, SEDGWICK, DETERT, MORAN & ARNOLD LLP, as and for its ANSWER to the Plaintiff's "Verified" Complaint, alleges the following upon information and belief:

GENERAL ALLEGATIONS

1. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "1" of plaintiff's "Verified" Complaint.
2. Defendant denies each and every allegation set forth in paragraph "2" of plaintiff's "Verified" Complaint, except admits that AMERICAN NATIONAL RED CROSS is a corporate body and politic in the District of Columbia organized under a charter granted by Acts of Congress.
3. Defendant denies each and every allegation set forth in paragraph "3" of plaintiff's "Verified" Complaint, except admits that AMERICAN NATIONAL RED CROSS is a corporate body and politic in the District of Columbia organized under a charter granted by Acts of Congress.
4. Defendant denies each and every allegation set forth in paragraph "4" of plaintiff's "Verified" Complaint, except admits that AMERICAN NATIONAL RED CROSS is a corporate body and politic in the District of Columbia organized under a charter granted by Acts of Congress.

5. Defendant denies each and every allegation set forth in paragraph "5" of plaintiff's "Verified" Complaint, except admits that AMERICAN NATIONAL RED CROSS is a corporate body and politic in the District of Columbia organized under a charter granted by Acts of Congress.

ANSWERING THE FIRST CAUSE OF ACTION

6. Defendant repeats and reiterates each and every denial herein before made with the same force and effect as though the same were set forth at length herein in answer to paragraph "6" of the plaintiff's "Verified" Complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "7" of plaintiff's "Verified" Complaint.

8. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "8" of plaintiff's "Verified" Complaint.

9. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "9" of plaintiff's "Verified" Complaint.

10. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "10" of plaintiff's "Verified" Complaint and respectfully refers all questions of law to the Honorable Court.

11. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "11" of plaintiff's "Verified" Complaint.

12. Defendant denies each and every allegation set forth in paragraph "12" of plaintiff's "Verified" Complaint.

13. Defendant denies each and every allegation set forth in paragraph "13" of plaintiff's "Verified" Complaint.

14. Defendant denies each and every allegation set forth in paragraph "14" of plaintiff's "Verified" Complaint.

15. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "15" of plaintiff's "Verified" Complaint.

16. Defendant denies each and every allegation set forth in paragraph "16" of plaintiff's "Verified" Complaint.

17. Defendant denies each and every allegation set forth in paragraph "17" of plaintiff's "Verified" Complaint.

18. Defendant denies each and every allegation set forth in paragraph "18" of plaintiff's "Verified" Complaint.

19. Defendant denies each and every allegation set forth in paragraph "19" of the First Cause of Action of plaintiff's "Verified" Complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "20" of plaintiff's "Verified" Complaint and respectfully refers all questions of law to the Honorable Court.

21. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "21" of plaintiff's "Verified" Complaint.

22. Defendant denies each and every allegation set forth in paragraph "22" of plaintiff's "Verified" Complaint.

23. Defendant denies each and every allegation set forth in paragraph "23" of plaintiff's "Verified" Complaint.

24. Defendant denies each and every allegation set forth in paragraph "24" of plaintiff's "Verified" Complaint.

25. Defendant denies each and every allegation set forth in paragraph "25" of plaintiff's "Verified" Complaint.

26. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "26" of plaintiff's "Verified" Complaint and respectfully refers all questions of law to the Honorable Court.

27. Defendant denies each and every allegation set forth in paragraph "27" of plaintiff's "Verified" Complaint.

28. Defendant denies each and every allegation set forth in paragraph "28" of plaintiff's "Verified" Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

29. Defendant repeats and reiterates each and every denial herein before made with the same force and effect as though the same were set forth at length herein in answer to paragraph "29" of plaintiff's "Verified" Complaint.

30. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "30" of plaintiff's "Verified" Complaint.

31. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "31" of plaintiff's "Verified" Complaint.

32. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "32" of plaintiff's "Verified" Complaint.

33. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "33" of plaintiff's "Verified" Complaint and respectfully refers all questions of law to the Honorable Court.

34. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "34" of plaintiff's "Verified" Complaint.

35. Defendant denies each and every allegation set forth in paragraph "35" of plaintiff's "Verified" Complaint.

36. Defendant denies each and every allegation set forth in paragraph "36" of plaintiff's "Verified" Complaint.

37. Defendant denies each and every allegation set forth in paragraph "37" of plaintiff's "Verified" Complaint.

38. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "38" of plaintiff's "Verified" Complaint.

39. Defendant denies each and every allegation set forth in paragraph "39" of plaintiff's "Verified" Complaint.

40. Defendant denies each and every allegation set forth in paragraph "40" of plaintiff's "Verified" Complaint.

41. Defendant denies each and every allegation set forth in paragraph "41" of plaintiff's "Verified" Complaint.

42. Defendant denies each and every allegation set forth in paragraph "42" of plaintiff's "Verified" Complaint.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "43" of plaintiff's "Verified" Complaint and respectfully refers all questions of law to the Honorable Court.

44. Defendant denies knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "44" of plaintiff's "Verified" Complaint.

45. Defendant denies each and every allegation set forth in paragraph "45" of plaintiff's "Verified" Complaint.

46. Defendant denies each and every allegation set forth in paragraph "46" of plaintiff's "Verified" Complaint.

47. Defendant denies each and every allegation set forth in paragraph “47” of plaintiff’s “Verified” Complaint.

48. Defendant denies each and every allegation set forth in paragraph “48” of plaintiff’s “Verified” Complaint.

49. Defendant denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph “49” of plaintiff’s “Verified” Complaint and respectfully refers all questions of law to the Honorable Court.

50. Defendant denies each and every allegation set forth in paragraph “50” of plaintiff’s “Verified” Complaint.

51. Defendant denies each and every allegation set forth in paragraph “51” of plaintiff’s “Verified” Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FIRST: If injuries and damages were sustained by the plaintiff at the time and place and in the manner alleged in the “Verified” Complaint, such injuries and damages are attributable in whole or in part to the culpable conduct of the plaintiff. If any damages are recoverable against this answering defendant, the amount of such damages shall be diminished in the proportion, which the culpable conduct attributable to the plaintiff bears to the culpable conduct, if any, of this answering defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

SECOND: Any injuries or damages were caused, in whole or in part, by the negligence or other culpable conduct of third parties over which this answering defendant had no control or right to exercise such control.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

THIRD: That, pursuant to New York Civil Practice Law and Rules Article 16, if it is determined by verdict or decision that two or more tortfeasors are jointly liable to the plaintiff, and if the liability of this answering defendant is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of such defendant to the claimants for non-economic loss shall not exceed this defendant's equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

FOURTH: Pursuant to New York Civil Practice Law and Rules §4545, if the Court finds that any costs of medical care, which the plaintiff may have incurred, were replaced or indemnified in whole or in part by any collateral source, the Court shall reduce the amount of any award to the plaintiff by the amount of said reimbursement, minus the premiums, if any, paid by the plaintiff, or anyone on his behalf, for such benefits for the applicable period immediately preceding the accrual of this lawsuit.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

FIFTH: If the plaintiff prevails at trial, then this defendant intend to ask the Court to reduce any award to the plaintiff for loss of earnings, or impairment of earning ability, in accordance with CPLR § 4546.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

SIXTH: This defendant is not liable for the injuries alleged in the plaintiff's "Verified" Complaint, because the plaintiff assumed the risks of engaging in the activities giving rise to the action.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

SEVENTH: Plaintiff failed to comply with instructions of his doctors and thereby failed to mitigate his alleged damages.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

EIGHTH: All claims asserted in the plaintiff's "Verified" Complaint fail to state facts sufficient to constitute a cognizable claim for relief against this defendant.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

NINTH: Upon information and belief, the plaintiff failed to mitigate or prevent the alleged injuries and damages.

WHEREFORE, defendant AMERICAN NATIONAL RED CROSS, s/h/a "AMERICAN RED CROSS" and AMERICAN RED CROSS IN GREATER NEW YORK demand judgment as follows:


1. Dismissing plaintiff's "Verified" Complaint;
2. If the plaintiff recovers judgment against defendant AMERICAN NATIONAL RED CROSS, s/h/a "AMERICAN RED CROSS and AMERICAN RED CROSS IN GREATER NEW YORK," this defendant demands a reduction of that judgment by the percentage constituting plaintiff's culpable conduct or the culpable conduct of any third party or future co-defendant(s)/third-party defendant(s), plus the fees incurred in defending this action, including reasonable attorneys' fees;

3. Such other and further relief as the Court may deem just and proper, including costs and disbursements.

Dated: November 30, 2009

Yours, etc.

SEDGWICK, DETERT, MORAN & ARNOLD
LLP

By: 

Caryn M. Silverman (CS-4396)

Attorneys for Defendant

AMERICAN NATIONAL RED CROSS,
s/h/a "AMERICAN RED CROSS and
AMERICAN RED CROSS IN GREATER
NEW YORK"

125 Broad Street, 39th Floor

New York, New York 10004-2400

(212) 422-0202

[SDMA File No. 2912-122555]

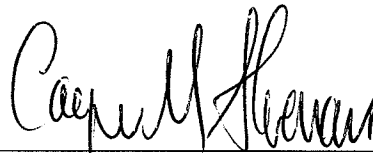
TO: Brandon M. Cruz, Esq.
THE BONGIORNO LAW FIRM, PLLC
Attorney for Plaintiff
250 Mineola Boulevard
Mineola, New York 11501
(516) 741-4170

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached **DEFENDANT'S ANSWER TO PLAINTIFF'S "VERIFIED" COMPLAINT** was served via regular mail on November 30, 2009, upon:

Brandon M. Cruz, Esq.
The BONGIORNO LAW FIRM, PLLC
Attorney for Plaintiff
250 Mineola Boulevard
Mineola, New York 11501
(516) 741-4170

Dated: New York, New York
November 30, 2009

A handwritten signature in black ink, appearing to read 'Caryn M. Silverman', written over a horizontal line.

Caryn M. Silverman (CS-4396)